



## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OGC-2023-0028; FRL-10587-01-OGC]

### Proposed Consent Decree, Clean Air Act Citizen Suit

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed consent decree; request for public comment.

**SUMMARY:** In accordance with the Clean Air Act, as amended (CAA or the Act), the Environmental Protection Agency (EPA or the Agency) is providing notice of a proposed consent decree in *California Communities Against Toxics, et al. v. Regan*, No. 1:22-cv-01012-CRC (D.D.C.). On April 12, 2022, Plaintiffs California Communities Against Toxics, Coalition For A Safe Environment, and Sierra Club filed a complaint in the United States District Court in the District of Columbia. In the complaint, which was amended on July 6, 2022, Plaintiffs allege that EPA failed to perform its non-discretionary duty to review and revise as necessary the National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities. Plaintiffs further allege that EPA has unreasonably delayed in responding to Plaintiffs' 2012 petition for administrative reconsideration of the final rule *Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews*. The proposed consent decree would establish deadlines for EPA to sign proposed and final actions.

**DATES:** Written comments on the proposed consent decree must be received by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0028, online at <https://www.regulations.gov> (EPA's preferred method). Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID number for this action.

Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the “Additional Information about Commenting on the Proposed Consent Decree” heading under the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Amy Huang Branning, Air and Radiation Law Office, Office of General Counsel, U.S. Environmental Protection Agency; telephone (202) 564-1744; email address [branning.amy@epa.gov](mailto:branning.amy@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Obtaining a Copy of the Proposed Consent Decree**

The official public docket for this action (identified by Docket ID No. EPA-HQ-OGC-2023-0028) contains a copy of the proposed consent decree. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

The electronic version of the public docket for this action contains a copy of the proposed consent decree and is available through <https://www.regulations.gov>. You may use <https://www.regulations.gov> to submit or view public comments, access the index listing of the contents of the official public docket, and access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select “search.”

**II. Additional Information about the Proposed Consent Decree**

On April 12, 2022, Plaintiffs California Communities Against Toxics, Coalition For A Safe Environment, and Sierra Club (collectively “Plaintiffs”) filed a complaint in the United

States District Court for the District of Columbia alleging that EPA has failed to perform its non-discretionary duty under CAA section 112(d)(6) to “review, and revise as necessary” the National Emission Standards for Hazardous Air Pollutants from Oil and Natural Gas Production Facilities and Natural Gas Transmission and Storage Facilities, 40 CFR part 60, subparts HH and HHH respectively (“Oil and Gas NESHAP”), at least every eight years. On July 6, 2022, Plaintiffs amended the complaint to also claim that EPA has unreasonably delayed in taking final action on Plaintiffs’ 2012 petition for administrative reconsideration of the final rule *Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews*, 77 FR 49490 (Aug. 16, 2012) (“2012 Rule”).

The 2012 Rule contains actions on both the new source performance standards (“NSPS”) for the oil and natural gas sector under CAA section 111 and the Oil and Gas NESHAP under CAA section 112. Multiple parties, including Plaintiffs, sought judicial review of the 2012 Rule in the U.S. Court of Appeals for the District of the Columbia (“D.C Circuit”). In addition, Plaintiffs submitted to EPA a petition for administrative reconsideration of the 2012 Rule (“Reconsideration Petition”). In that petition, Plaintiffs objected to multiple aspects of the NESHAP portion of the 2012 Rule, including provision of an affirmative defense to civil penalties for violating emissions standards caused by malfunctions (“affirmative defense”).

The D.C. Circuit consolidated all petitions for judicial review of the 2012 Rule and granted EPA’s motion to (1) sever NESHAP-related challenges from NSPS-related challenges and (2) hold the former in abeyance pending EPA’s reconsideration of the NESHAP portion of the rule. *American Petroleum Institute v. EPA*, No. 12-1405 (D.C. Cir.). In a letter dated December 14, 2016, EPA informed Plaintiffs’ counsel that EPA’s reconsideration of the NESHAP portion of the 2012 Rule was still ongoing and that it was reviewing, among several other issues, the affirmative defense provisions raised in the Reconsideration Petition.

The proposed consent decree, if finalized, would establish deadlines for EPA to take proposed and final actions under CAA section 112(d)(6) for the Oil and Gas NESHAP and for

addressing the Reconsideration Petition. Specifically, EPA would be required to sign the proposed action addressing the affirmative defense issue in the Reconsideration Petition by February 12, 2024, and final action by December 10, 2024. EPA would also be required to sign the proposed action on its review of the Oil and Gas NESHAP under CAA section 112(d)(6) and on other Reconsideration Petition issues that EPA is reconsidering by December 10, 2024, and the final action by December 10, 2025.

In accordance with section 113(g) of the CAA, for a period of thirty (30) days following the date of publication of this document, the Agency will accept written comments relating to the proposed consent decree. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act.

### **III. Additional Information about Commenting on the Proposed Consent Decree**

Submit your comments, identified by Docket ID No. EPA-HQ-OGC-2023-0028, via <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from this docket. EPA may publish any comment received to its public docket. Do not submit to EPA's docket at <https://www.regulations.gov> any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. For additional information about submitting information identified as CBI, please contact the person listed in the **FOR**

**FURTHER INFORMATION CONTACT** section of this document. Note that written comments containing CBI and submitted by mail may be delayed and deliveries or couriers will be received by scheduled appointment only.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the <https://www.regulations.gov> website to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

**Gautam Srinivasan,**  
*Associate General Counsel.*

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